CHONG SIAT YONG & ORS.

v.

YEE MUN YING & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
LC VOHRAH J
[ORIGINATING MOTION NO. F 58 OF 1984]
17 JUNE 1985

LAND LAW: *Setting aside of private caveat - Onus on the respondents to satisfy the Court on affidavit evidence that there was a serious question to be tried and if the answer was yes, that on the balance of convenience, it would be better to maintain the status quo until the trial of the action - Terms and conditions of agreement to be interpreted without oral evidence - Section 323(1) National Land Code.*

The applicants, who were executors and trustees of the estate of Yong Pung Pook which included 4 properties which were the subject matter of this motion, granted an option to purchase these properties to the respondents. The respondents agreed and letters were exchanged. The respondents lodged a private caveat against these properties. Negotiations then ensued between the parties but fell through. The applicants are now applying for the setting aside of this private caveat.

Held:

[1] The respondent's contention that the *status quo* should be maintained until the disposal of the suit which was instituted by the respondents against the applicants for specific performance and damages on the basis of the draft sale and purchase agreement, was rejected.

[2] On construing the provisions of the "option", the Judge held that the words "subject to the terms and conditions to be agreed upon" made the exercise of the so-called option conditional upon and subject to the applicants agreeing to the terms and conditions in the draft sale and purchase agreement. Consequently, there was no concluded contract between the parties.

[3] The 1st respondent's claim for commission was a purely personal debt and therefore, she was not entitled to enter a caveat under s. 323(1) of the National Land Code.

[4] There was no questions to be tried as to justify consideration by the Court of the pros and cons for the continuance of the private caveat.

[Order in the terms of the application.]

Cases referred to:
Eng Mee Yong & Ors. v. V. Letchumanan [1979] 2 MLJ 212
Kasivisvanathan Chettiar v. Pereira [1976] 2 MLJ 110
Low Kar Yit & Ors. v. Mohamed Isa & Anor. [1963] 29 MLJ 165
Manocaran Navaratnasingam v. Tan Yew Sin & Ors. [1983] CLJ (Rep) 648

Legislation referred to:
National Land Code 1965, s. 323(1)

For the applicants - Mr. K.G. Ong; M/s K.G. Ong & Co.
For the respondents - Mr. Harpal Singh; M/s. A.J. Ariffin, Chong & Harpal

JUDGMENT

LC Vohrah J:

The applicants by way of notice of originating motion sought to set aside a private caveat which had been lodged by the respondents in respect of four pieces of land. They also prayed for damages to be assessed for alleged wrongful entry of the caveat without reasonable cause and for the costs of their application to be paid by the respondents.

The facts of the case are as follows. The applicants are executors and trustees of the estate of Yong Pung Pook @ Yong Shan Khin whose assets comprise, *inter alia*, four pieces of land, forming the subject matter of this motion, held under C.T. 9212 Lot 32, C.T. 9215 Lot 37, C.T. 9213 Lot 33 and C.T. 9216 Lot 40, all in section 15, Kuala Lumpur ("the said properties"). On 13 February 1984 the applicants granted to the first respondent a type-written document entitled "Option" in the following terms:

> In consideration of the sum of RM1 (One Dollar) paid to us by MDM Yee Mun Ying (f) WE, the Trustees of the Estate of Yong Pung Pook @ Yong Shan Khin do hereby grant Madam Yee Mun Ying (f) of No. 38 Jalan SS2/19, Petaling Jaya, on Option to sell the above-mentioned properties without vacant possession for the sum of Malaysian Ringgit one million eight hundred thousand only (RM1.8 MILLION) **subject to the terms and conditions to be agreed upon.**
>
> In the event of the full purchase price being paid to us, we agree to pay Madam Yee Mun Ying a Commission of Malaysian Ringgit Five Thousand only (RM5,000).
>
> This Option shall be valid from 13 February 1984 to 13 March 1984 up to 4.00 p.m.
>
> ...
>
> (emphasis supplied)

Subsequently by letter dated 7 March 1984 (See Exh. P.3, Encl. 2) Messrs. Michael Chen & Lee, solicitors acting on behalf of the first and second respondents, informed the applicants that the second respondent was "agreeable" to purchasing the said properties and that pursuant to the "said Option" they were giving notice on behalf of the second respondent "to exercise the said Option" and that the second respondent had deposited a sum of RM180,000 with them. They also in that letter forwarded a draft sale and purchase agreement "for finalisation". On 12 March 1984 another letter was sent by Messrs. Michael Chen & Lee to the second applicant both by post and by hand at two different addresses the contents of which read:

> Messrs. Yong Chit Chong, 12 March 1984.
> Yong Si Chong & Yong Chuan Chong,
> No. 18, Jalan Limak Dua,
> Taman Segar,
> KUALA LUMPUR. (A.R. REGISTERED)
>
> Messrs. Yong Chit Chong,
> Yong Si Chong & Yong Chuan Chong,
> No. 38, Jalan Limak Dua,
> Taman Segar,
> KUALA LUMPUR. (A.R. REGISTERED)

Dear Sirs,

Re: OPTION dated 13 February 1984
C.T. Nos. 9212 & 9215 Lots 32 & 37,
C.T. Nos. 9213 & 9216 Lots 33 & 40, all in s. 15,
Nos. 81 & 83, Jalan Bandar, Kuala Lumpur.

Further to our letter of the 7th instant we are instructed by Md. Yee Mun Ying, the Option holder, and Mr. Yong Kwet Phin, the intending purchaser to reiterate that by our said notice in writing, our clients have exercise[d] the Option to purchase the above properties.

Our client, the intending purchaser by depositing the sum of RM180,000/- with us, has indicated that he is willing and able to execute the Contract of Sale upon the terms which are to be finalised by you.

We are further instructed that at the several meetings between yourselves and our client and or his representative, both before and after the said notice, the basic terms as to payment of deposit and balance of the purchase price have been agreed upon. A draft agreement has been forwarded to you for your approval.

As the properties for[m] part of the trust estate of the deceased, unless you inform us of the present position as to the Extract of Letters of Administration/Probate, we are unable to make adequate provisions in the draft agreement.

Any delay in finalising the draft would only delay the execution of the Agreement. Our Client will not be responsible for such delay. Our Client will not hesitate to take such legal action as he may deem fit and proper should we or our client or his representative fail to hear from you.

Yours faithfully,

Signed:

c.c. Messrs. Yong Chit Chong,
Yong Si Chong & Yong Chuan Chong,
No. 18, Jalan Limak Dua,
Taman Segar, KUALA LUMPUR.
(BY CERTIFICATE OF POSTING)

c.c. Messrs. Yong Chit Chong,
Yong Si Chong & Yong Chuan Chong,
No. 38, Jalan Limak Dua,
Taman Segar, KUALA LUMPUR.
(BY CERTIFICATE OF POSTING)

c.c. Messrs. Yong Chit Chong,
Yong Si Chong & Yong Chuan Chong,
No. 18 or 38 Jalan Limak Dua,
Taman Segar, KUALA LUMPUR. (BY HAND)

Apparently on the same day the second, third and fourth applicants replied to the first respondent and the contents of their letter (See. Exh. P.5, Encl. 2) read:

Madam Yee Mun Ying, 12 March 1984.
8.40 p.m.

re: Option dated 13 February 1984
C.T. Nos. 9212 & 9215 Lots 32 & 37
C.T. Nos. 9213 & 9216 Lots 33 & 40
all in Section 15, Town Kuala Lumpur Nos. 81 & 83,
Jalan Bandar, Kuala Lumpur.

We note that you have exercised your option to purchase the above properties.

We are prepared to sell the above properties to you upon the following terms and conditions:

1. The above two properties must be sold as a whole simultaneously at the same time. Failure to purchase either one of the two properties will render the whole deal void. Therefore we would like one Sales & Purchase Agreement to be executed for both the two properties.
2. The total purchase price shall be RM1.8 million free from all encumbrances but without vacant possession.
3. We require 50% to be paid as deposit and part payment and we need to utilise same to pay estate duty for the Estate of Yong Pung Pook to enable us to extract the grant of probate from Court.
4. As the purchase price is more than one million, it is your responsibility to obtain FIC approval within three (3) months from the date of the Sale & Purchase Agreement or one week from the date when the grant of probate is extracted whichever is later and you shall accept all terms of such approval.
5. The balance of 50% of the purchase price shall be paid to our solicitors as stake-holders with[in] 3 months from the date of Sale & Purchase Agreement and upon obtaining FIC approval or one week from the date we extract the grant of probate whichever is later.
6. If the approval of FIC is not obtained within the stipulated time, the Sale and Purchase Agreement shall be terminated and 40% of the deposit paid shall be refunded to you free of interest and 10% of the deposit shall be forfeited.
7. In the event that you fail to pay the balance purchase price within the stipulated time, 10% of the purchase price shall be forfeited.
8. A formal Sale and Purchase Agreement incorporating the above terms and conditions shall be executed and entered into by the parties on or before 24 March 1984.

We trust the above terms and conditions can be acceptable to you.

Yours faithfully,
Signed:
Signed:
Signed:

The respondents denied receiving this letter. (In my view, its non-receipt by the respondents or even its existence was quite immaterial for the purposes of the application for the reasons given hereunder). On 15 March 1984 they lodged a private caveat against the said properties under Caveat Persendirian Presentation No. 1079/84 Jil. 29 Fol. 5, the subject matter of this application. Subsequent to the lodging of this private caveat negotiations ensued between the parties but fell through.

I did not think it could be disputed on the authority of *Eng Mee Yong & Ors. v. V. Letchumanan* [1979] 2 MLJ 212 that the onus in the present case was upon the respondents to satisfy the Court on the affidavit evidence presented that, firstly, their claim to an interest in the said properties did raise a serious question to be tried and, if they succeeded in so satisfying, that, secondly, on the balance of convenience it would have been better to maintain the *status quo* until the trial of the action by preventing the applicants from disposing of the said properties to some third party.

The main ground of the respondent's claim appeared to be the fact that Civil Suit No. F. 15 of 1985 had on 11 January 1985 been filed by the respondents against the applicants (See Exh. 10, Encl. 1). In it the respondents as plaintiffs claim specific performance and damages

on the basis of the draft sale and purchase agreement which Messrs. Michael Chen & Lee had sent with their letter of 7 March 1984 referred to earlier. It was submitted by Counsel for the respondents that because the suit had been instituted and because the respondents had thereby shown their intention to purchase the said properties the *status quo* must be maintained until the disposal of the suit. He next contended that as the applicant's case depended upon the construction of the provisions of the "option", the question of such construction could only be resolved fairly and satisfactorily during a trial. I did not agree with both these contentions.

I took the view on the authority of *Eng Mee Yong's* case (at page 215) that the first contention based ostensibly on *Kasivisvanathan Chettiar v. Pereira* [1976] 2 MLJ 110 could no longer be supported. As to the second contention it was clear that the rights which the respondents claimed were dependant squarely upon the written terms of the so-called option the meaning of which, in my view, must clearly be discerned from the language that was used. This, I decided, was a question of the interpretation of the document itself and required no additional aid in the form of oral evidence which had to be adduced at a trial. On the authority of *Low Kar Yit & Ors. v. Mohamed Isa & Anor.* [1963] 29 MLJ 165 and *Manocaran Navaratnasingam v. Tan Yew Sin & Ors.* [1983] CLJ (Rep) 648, I was of the view that the words "subject to the terms and conditions to be agreed upon" made the exercise of the so-called option conditional upon and subject to the applicants agreeing to the terms and conditions embodied in the draft agreement sent by the solicitors for the respondents. On the facts as disclosed by the affidavits including the undisputed documents exhibited thereto, I was clearly of the opinion that there was no such agreement on the part of the applicants in the present case so that there was no concluded contract between the applicants and the second respondent. As far as the first respondent was concerned, I agreed with Counsel for the applicants that her claim, in the event that the purchase price of RM1.8 million was fully paid up, would only have been for the commission of RM5,000, a purely personal debt for which she would not have been entitled to enter a caveat under the provisions of s. 323(1) of the National Land Code. In my view there were in fact no questions to be tried so as to justify consideration by the Court of the pros and cons for the continuance of the private caveat and I accordingly made an order in terms of the application.

Also found at [1986] 1 CLJ 37